

BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEAL OF ST. MICHAEL'S) APPEAL NO. 07-A-2002
CARNEGIE, LLC from the decision of the Board of) FINAL DECISION
Equalization of Ada County for tax year 2007.) AND ORDER

RELIGIOUS EXEMPTION APPEAL

THIS MATTER came on for hearing December 7, 2007, in Boise, Idaho before Hearing Officer Sandra Tatom. Board Members Lyle R. Cobbs, David E. Kinghorn, and Linda S. Pike participated in this decision. Attorney Richard G. Smith, Dean Richard Demorest and Senior Warden Glen Walker appeared at hearing for Appellant St. Michael's Carnegie, LLC. Deputy Prosecuting Attorney Ray Chacko appeared for Respondent Ada County. This appeal is taken from a decision of the Ada County Board of Equalization denying the request for tax exemption of property described as Parcel No. R1013005750.

The issue on appeal is whether subject property qualifies for an exemption from property taxes pursuant to Idaho Code § 63-602B as property owned by a religious corporation or society.

The decision of the Ada County Board of Equalization is affirmed.

FINDINGS OF FACT

The assessed land value is \$395,200, and the improvements' valuation is \$768,300, totaling \$1,163,500. Appellant requests a full exemption from property assessment and taxation pursuant to Idaho Code § 63-602B.

The subject property is .84 acres located in downtown Boise. Subject is improved with a large building commonly known, and hereinafter referred to, as Carnegie Library.

A brief history leading up to this appeal was provided by Reverend Richard Demerest. St. Michael's Parrish, Inc. owns and operates certain properties in downtown Boise collectively referred to as the Campus. The buildings have been and are currently used for various religious

and charitable purposes. Indeed, the properties have been granted property tax exemption for the 2007 tax year.

Due to increasing religious and charitable activities carried on by St. Michael's Parrish, Inc., the demand for meeting and worship space exceeded the capacity of the Campus. As such, the "managing members" of St. Michael's Parrish, Inc. began exploring options to acquire additional space. In mid-2006, Carnegie Library became available for purchase. Donations from parishioners of the church were collected and constituted a portion of the funds needed to acquire Carnegie Library. The remaining monies were donated by a single member (the Funder) of the congregation.

At the recommendation of the Funder and the managing council of the church, Appellant St. Michael's Carnegie, LLC was formed to purchase Carnegie Library. The sole member of St. Michael's Carnegie, LLC is St. Michael's Parrish, Inc. Rev. Demerest testified Carnegie Library is considered by the church and its members as part of the Campus and is not used or otherwise treated separately. Carnegie Library is used by parishioners of the church for the same religious and charitable purposes as the other properties owned by St. Michael's Parrish, Inc.

St. Michael's Carnegie, LLC applied for tax exemption for the Carnegie Library property pursuant to Idaho Code § 63-602B as property owned by a religious corporation or society and used for the religious purposes of such entity. The Ada County Commissioners denied the application and notified Appellant of such in a letter dated May 1, 2007. Appellant believed the exemption should have been granted, so appealed to this Board.

Both parties to this appeal agree Carnegie Library is used for the purpose of carrying out the religious and charitable mission of the church. In other words, there is no dispute concerning the second prong of the religious exemption test - that the property be used exclusively for the

religious purposes of the corporation or society. The issue, as characterized by the parties, concerns the ownership of Carnegie Library by St. Michael's Carnegie, LLC; the first prong.

Appellant argued the technical ownership of the Carnegie Library should not bar the property from exemption. It was contended St. Michael's Carnegie, LLC was simply formed to facilitate the financing needed to purchase Carnegie Library and was not intended to be an entity outside the church.

Because St. Michael's Parrish, Inc. is the sole member, St. Michael's Carnegie, LLC is considered and treated as a *disregarded entity* for income tax purposes, and thus is not required to file a federal income tax return. In essence, the two organizations are considered a single entity for the purposes of income taxation. As such, Appellant's counsel urged this Board to look past the "form" (who owns Carnegie Library) and focus on the "substance" (the reason Carnegie Library was acquired and how the property is used) in granting the exemption. It was argued the legislative intent was to grant tax exemptions to entities such as Appellant, which should override the strict statutory construction of §63-602B, as advocated by Respondent.

An alternative argument put forth by Appellant was that St. Michael's Carnegie, LLC qualifies for exemption as part of a religious society. It was argued that a "society", as contemplated by the statute, is a group of persons or entities united to act for a common purpose. It was contended Appellant and St. Michael's Parrish, Inc. are indeed two entities banded together for common religious and charitable purposes. As such, it was reasoned that because St. Michael's Parish, Inc. qualifies for exemption, so should Appellant, as part of the same religious society.

Respondent stated exemption statutes are to be narrowly construed against taxpayers and argued St. Michael's Carnegie, LLC fails the first prong of the test contained in the

exemption statute that requires the property to be owned by a religious corporation or society. Respondent acknowledged if Carnegie Library was owned by St. Michael's Parish, Inc., the property would qualify for religious exemption. The problem here, as explained by Respondent, is that St. Michael's Carnegie, LLC is the record owner of the property and is not a recognized religious entity. Respondent argued strict construction of the statute requires the requested exemption not be granted in this case.

CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of subject's qualification for property tax exemption. This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following.

At issue in this appeal is subject's qualification for exemption under Idaho Code § 63-602B, which provides in pertinent part:

(1) The following property is exempt from taxation: property belonging to any religious corporation or society of this state, used exclusively for and in connection with any combination of religious, educational, or recreational purposes or activities of such religious corporation or society

As noted by both parties, the statute outlines a two-prong test that must be satisfied before a property is granted a religious exemption. The first prong dictates the property must belong to a religious corporation or society. The second requires the property be used exclusively for religious purposes or activities of the religious corporation or society.

The parties agree Carnegie Library is used for religious purposes and therefore satisfies the use prong. We concur. The issue in this case concerns whether the ownership prong is met.

First we must examine whether St. Michael's Carnegie, LLC qualifies as a religious entity

under the statute. Appellant's Articles of Organization, under Article 1.6, states the "Character of Business" as follows, "The business of the [Appellant] shall be to transact any and all lawful business as permitted by law under the [Idaho Limited Liability Company] Act." This is not a religious purpose as contemplated by the statute, so Appellant is not a recognized religious entity.

Appellant's position is the technical ownership of Carnegie Library should be overlooked and the focus should be on the religious use of the property. It was not disputed Carnegie Library is used by St. Michael's Parish, Inc. (a recognized religious corporation) for religious purposes in conjunction with and in the same manner as the other Campus buildings owned by the church.

Respondent argued exemption statutes are to be narrowly construed against taxpayers and contended Carnegie Library does not qualify for exemption because it is owned by Appellant St. Michael's Carnegie, LLC, which is not a recognized religious entity.

As noted in footnote 3 on page 3 of Respondent's January 4, 2008 brief, the Idaho Supreme Court in *Ada County Bd. of Equalization v. Highlands, Inc.*, held, "tax exemptions are strictly construed against the taxpayer" and "are narrowly construed, following the 'strict but reasonable' rule of statutory construction." 141 Idaho 202, 206, 108 P.3d 349, 353 (2005).

Appellant pointed to a recent act passed by the Idaho legislature amending the language of Idaho Code § 63-602C to include limited liability companies as eligible charitable organizations.

This appeal concerns Appellant's status on January 1, 2007: the applicable assessment date in this matter. Idaho Code § 63-205. Section 3 of the House Bill referenced by Appellant states " . . . this act shall be in full force and effect on and after its passage and approval, and

retroactively to January 1, 2008.” Appellant is a limited liability company and thus not eligible for consideration as a charitable entity for the 2007 tax year.

Appellant argued “This Board should disregard the form of the shell entity created to take title of this property for financing purposes, and should focus on the economic substance of the transaction – a church obtaining needed space to continue its religious and charitable missions.”

The problem is Appellant has asked this Board to disregard the plain meaning of the statute. Specifically, the portion that states property “belonging to” a religious entity.

“This Court has consistently adhered to the primary canon of statutory construction that where the language of the statute is unambiguous, the clear expressed intent of the legislature must be given effect and there is no occasion for construction. Moreover, unless a contrary purpose is clearly indicated, ordinary words will be given their ordinary meaning when construing a statute.” *Corporation of the Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Ada County*, 123 Idaho 410, 415, 849 P.2d 83, 86 (1993).

We interpret the words “belonging to” as synonymous to “owner”. In the area of property law, the relevant owner is the “record owner”, defined as “the person or persons in whose name or names the property stands upon the records of the county recorder’s office.” Idaho Code § 63-201(19). A *person* is understood to include a limited liability company. It is undisputed that Appellant St. Michael’s Carnegie, LLC is the record owner of Carnegie Library. Thus, Carnegie Library *belongs to* Appellant, not St. Michael’s Parish, Inc., and Appellant is not a recognized religious limited liability company.

Appellant’s Articles of Organization filed with Idaho Secretary of State lists St. Michael’s Parish, Inc. as the sole member. As such, St. Michael’s Parish, Inc. controls the actions of Appellant, including the use to which Carnegie Library is put. Control, however, is not the same

as ownership, which is what the statute requires.

Appellant's counsel also referenced the fact that Appellant, as a single member limited liability company, is not required to file federal income tax returns. Appellant is considered a *disregarded entity* for the purposes of income taxation and is thus not required to file a federal income tax return. This characteristic is unique to single-member limited liability companies. The argument on this point appears to be that because Appellant is not recognized for income tax purposes, it should also be looked past in considering qualification for property tax exemption. This position, however, would be in error because income taxation is different than property taxation and any exemptions granted thereunder.

We acknowledge Carnegie Library is being used for religious purposes and sympathize with Appellant's position. However, *use* is only one prong of the test and alone does not qualify a property for religious exemption. We cannot simply look past the ownership of Carnegie Library and grant the requested exemption. St. Michael's Parish, Inc. chose to form St. Michael's Carnegie, LLC for the purpose of acquiring Carnegie Library and must bear the burden of that choice; even if the consequences were unintended. Certainly, the property could have been acquired in another fashion.

The alternative argument as to why the first prong of the statute is satisfied centers on Appellant's contention it is part of a religious society along with St. Michael's Parish, Inc.

"Society" is not defined in Idaho Code, nor to our knowledge, has the Idaho Supreme Court had occasion to contemplate what is meant by the term. As neither the Legislature nor the Supreme Court have provided guidance on the issue, we are here left with the task.

Webster's College Dictionary (2003) defines society as, "4: an association of persons for some purpose."

Black's Law Dictionary defines society as, "2. An association or company of persons (usu. unincorporated) united by mutual consent, to deliberate, determine, and act jointly for a common purpose." (Seventh Ed. 1999)

In our mind, a society is an association of individuals (even perhaps entities) united by mutual consent to come together for a common purpose. A religious society would then require the common purpose be religious in nature. We do not believe Appellant qualifies as a religious society.

Furthermore, we cannot say Appellant and St. Michael's Parish, Inc. are united by mutual consent. The church is the sole member of St. Michael's Carnegie, LLC, and thus as noted earlier, has control over Appellant's activities and decisions. Appellant is not free to disassociate from the church or otherwise conduct its own business. If a society exists, it cannot be said Appellant is a voluntary member. There is nothing mutual about the relationship.

For the reasons outlined above, we affirm the decision of the Ada County Board of Equalization.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Ada County Board of Equalization concerning the subject parcel be, and the same hereby is, affirmed.

APRIL 30, 2008